

MONTANA LEGISLATIVE HISTORY

Chapter 243 19 29

Bill H _____ S 153 Original bill & history ____C

H. Committee on Judiciary

Hearing Date(s) Mar 02 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out _____ ☐ C

S. Committee on Judiciary

Hearing Date(s) Jan 25 ☒ C

Feb 07 ☒ C

_____ ☐ C

_____ ☐ C

Feb 07 ☒ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

SENATE BILL NO. 153

INTRODUCED BY STORY

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE SENATE

January 18, 1979	Introduced and referred to Committee on Judiciary.
January 19, 1979	Fiscal note requested.
January 24, 1979	Fiscal note returned.
February 10, 1979	Committee recommend bill do pass as amended. Report adopted.
February 13, 1979	Printed and placed on members' desks.
February 14, 1979	Second reading, do pass.
February 15, 1979	Considered correctly engrossed.
February 16, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 17, 1979	Introduced and referred to Committee on Judiciary.
March 6, 1979	Committee recommend bill be concurred in. Report adopted.
March 7, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in.

IN THE SENATE

March 10, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Amended* BILL NO. *153*
2 INTRODUCED BY *Stony*
3 BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LAWS RELATING TO ADMINISTRATIVE RULEMAKING; TO
7 DEFINE "PERSON" TO INCLUDE AGENCIES; TO CREATE A REVOLVING
8 FUND FOR PAYING THE EXPENSES OF PUBLICATION OF
9 ADMINISTRATIVE RULES OF MONTANA AND THE REGISTER; AMENDING
10 SECTIONS 2-3-102, 2-4-102, 2-4-103, 2-4-302, 2-4-303,
11 2-4-305, 2-4-306, 2-4-307, 2-4-311, 2-4-312, 2-4-313,
12 2-4-402, 2-4-501, AND 2-4-506, MCA."
13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. Section 2-3-102, MCA, is amended to read:
16 "2-3-102. Definitions. As used in this part, the
17 following definitions apply:
18 (1) "Agency" means any board, bureau, commission,
19 department, authority, or officer of the state or local
20 government authorized by law to make rules, determine
21 contested cases, or enter into contracts except:
22 (a) the legislature and any branch, committee, or
23 officer thereof;
24 (b) the judicial branches and any committee or officer
25 thereof;

1 (c) the governor, except that an agency is not exempt
2 because the governor has been designated as a member
3 thereof; or
4 (d) the state military establishment and agencies
5 concerned with civil defense and recovery from hostile
6 attack.
7 (2) "Rule" means any agency regulation, standard, or
8 statement of general applicability that implements,
9 interprets, or prescribes law or policy or describes the
10 organization, procedures, or practice requirements of any
11 agency. The term includes the amendment or repeal of a
12 prior rule but does not include:
13 (a) statements concerning only the internal management
14 of an agency and not affecting private rights or procedures
15 available to the public; or
16 (b) declaratory rulings as to the applicability of any
17 statutory provision or of any rule.
18 (3) "Agency action" means the whole or a part of ~~the~~
19 adoption of an agency rule, the issuance of a license, or
20 order, or the award of a contract, or the equivalent or
21 denial thereof."
22 Section 2. Section 2-4-102, MCA, is amended to read:
23 "2-4-102. Definitions. For purposes of this chapter,
24 the following definitions apply:
25 (1) "Administrative code committee" or "committee"

1 means the committee provided for in title 5, chapter 10,
2 part 3.

3 (2) "Agency" means any agency, as defined in 2-3-102,
4 of the state government, except that the provisions of this
5 chapter do not apply to the following:

6 (a) the state board of pardons, except that the board
7 shall be subject to the requirements of 2-4-103, 2-4-201,
8 2-4-202, and 2-4-306 and its rules shall be published in the
9 administrative rules of Montana and Montana administrative
10 register;

11 (b) the supervision and administration of any penal
12 institution with regard to the institutional supervision,
13 custody, control, care, or treatment of youths or prisoners;

14 (c) the board of regents and the Montana university
15 system;

16 (d) the financing, construction, and maintenance of
17 public works.

18 (3) "ARM" means the administrative rules of Montana.

19 (4) "Contested case" means any proceeding before an
20 agency in which a determination of legal rights, duties, or
21 privileges of a party is required by law to be made after an
22 opportunity for hearing. The term includes but is not
23 restricted to rate making, price fixing, and licensing.

24 (5) "License" includes the whole or part of any agency
25 permit, certificate, approval, registration, charter, or

1 other form of permission required by law but does not
2 include a license required solely for revenue purposes.

3 (6) "Licensing" includes any agency process respecting
4 the grant, denial, renewal, revocation, suspension,
5 annulment, withdrawal, limitation, transfer, or amendment of
6 a license.

7 (7) "Party" means any person or ~~agency~~ named or
8 admitted as a party or properly seeking and entitled as of
9 right to be admitted as a party, but nothing herein shall be
10 construed to prevent an agency from admitting any person or
11 agency as a party for limited purposes.

12 (8) "Person" means any individual, partnership,
13 corporation, association, governmental subdivision, ~~agency~~,
14 or public organization of any character other than an
15 agency.

16 (9) "Register" means the Montana administrative
17 register.

18 (10) "Rule" means each agency regulation, standard, or
19 statement of general applicability that implements,
20 interprets, or prescribes law or policy or describes the
21 organization, procedures, or practice requirements of an
22 agency. The term includes the amendment or repeal of a prior
23 rule but does not include:

24 (a) statements concerning only the internal management
25 of an agency and not affecting private rights or procedures

1 available to the public;

2 (b) ~~formal opinions of the attorney general and~~
3 declaratory rulings issued pursuant to 2-4-501;

4 (c) rules relating to the use of public works,
5 facilities, streets, and highways when the substance of such
6 rules is indicated to the public by means of signs or
7 signals;

8 (d) seasonal rules adopted annually relating to
9 hunting, fishing, and trapping when there is a statutory
10 requirement for the publication of such rules and rules
11 adopted annually relating to the seasonal recreational use
12 of lands and waters owned or controlled by the state when
13 the substance of such rules is indicated to the public by
14 means of signs or signals;

15 (e) rules implementing the state personnel
16 classification plan, the state wage and salary plan, or the
17 statewide budgeting and accounting system;

18 (f) uniform rules adopted pursuant to interstate
19 compact, except that such rules shall be filed in accordance
20 with 2-4-306 and shall be published in the administrative
21 rules of Montana.

22 (1) "Substantive rules" are either:

23 (a) legislative rules, which if adopted in accordance
24 with this chapter and under expressly delegated authority ~~to~~
25 ~~promulgate rules to implement a statute~~ have the force of

1 law and when not so adopted are invalid; or

2 (b) adjective or interpretive rules, which may be
3 adopted in accordance with this ~~part~~ chapter and under
4 express or implied authority to codify an interpretation of
5 a statute, ~~although such~~ such interpretation lacks the force
6 of law."

7 Section 3. Section 2-4-103, MCA, is amended to read:

8 "2-4-103. Rules and statements to be made available to
9 public. (1) Each agency shall:

10 (a) make available for public inspection all rules and
11 all other written statements of policy or interpretations
12 formulated, adopted, or used by the agency in the discharge
13 of its functions;

14 (b) upon request of any person ~~or agency~~, provide a
15 copy of any rule.

16 (2) Unless otherwise provided by statute, an agency
17 may require the payment of the cost of providing such
18 copies.

19 (3) No agency rule is valid or effective against any
20 person or party whose rights have been substantially
21 prejudiced by an agency's failure to comply with the public
22 inspection requirement herein."

23 Section 4. Section 2-4-302, MCA, is amended to read:

24 "2-4-302. Notice, hearing, and submission of views.

25 (1) Prior to the adoption, amendment, or repeal of any rule,

1 the agency shall give written notice of its intended action.
 2 The notice shall include a statement of either the terms or
 3 substance of the intended action or a description of the
 4 subjects and issues involved, the rationale for the intended
 5 action, and the time when, place where, and manner in which
 6 interested persons may present their views thereon.

7 (2) The notice shall be filed with the secretary of
 8 state for publication in the register as provided in 2-4-312
 9 and mailed to persons who have made timely requests to the
 10 agency for advance notice of its rulemaking proceedings. The
 11 notice shall be published and mailed at least 30 days in
 12 advance of the agency's intended action.

13 (3) If any statute provides for a different method of
 14 publication, the affected agency shall comply with the
 15 statute in addition to the requirements contained herein.
 16 However, in no case may the notice period be less than 30
 17 days or more than 6 months.

18 (4) Prior to the adoption, amendment, or repeal of any
 19 rule, the agency shall afford interested persons at least 20
 20 days' notice of a hearing and 28 days from the day of notice
 21 to submit data, views, or arguments, orally or in writing.
 22 In the case of substantive rules, opportunity for oral
 23 hearing shall be granted if requested by either 10% or 25,
 24 whichever is less, of the persons who will be directly
 25 affected by the proposed rule, by a governmental subdivision

1 or agency, or by an association having not less than 25
 2 members who will be directly affected.

3 (1) An agency may continue a hearing date for cause.
 4 Contested case procedures need not be followed in hearings
 5 held pursuant to this section. If a hearing is otherwise
 6 required by statute, nothing herein alters that
 7 requirement."

8 Section 5. Section 2-4-303, MCA, is amended to read:

9 "2-4-303. Emergency rules. (1) If an agency finds that
 10 an imminent peril to the public health, safety, or welfare
 11 requires adoption of a rule upon fewer than 20 30 days'
 12 notice and states in writing its reasons for that finding,
 13 it may proceed, without prior notice or hearing or upon any
 14 abbreviated notice and hearing that it finds practicable, to
 15 adopt an emergency rule. The rule may be effective for a
 16 period not longer than 120 days, but the adoption of an
 17 identical rule under 2-4-302 ~~and~~ 2-4-305(1) is not
 18 precluded.

19 (2) The sufficiency of the reasons for a finding of
 20 imminent peril to the public health, safety, or welfare is
 21 subject to judicial review."

22 Section 6. Section 2-4-305, MCA, is amended to read:

23 "2-4-305. Requisites for validity -- authority and
 24 statement of reasons. (1) The agency shall consider fully
 25 written and oral submissions respecting the proposed rule.

1 Upon adoption of a rule, an agency shall issue a concise
 2 statement of the principal reasons for and against its
 3 adoption, incorporating therein its reasons for overruling
 4 the considerations urged against its adoption. When no
 5 written or oral submissions have been received, an agency
 6 may omit the statement of reasons.

7 (2) Rules may not unnecessarily repeat statutory
 8 language. whenever it is necessary to refer to statutory
 9 language in order to convey the meaning of a rule
 10 interpreting the language, the reference shall clearly
 11 indicate that portion of the language which is statutory and
 12 the portion which is amplification of the language.

13 (3) Each rule shall include a citation to the specific
 14 grant of rulemaking authority pursuant to which it or any
 15 part thereof is adopted. In addition, each rule shall
 16 include a citation to the specific section or sections in
 17 the Montana Code Annotated which the rule purports to
 18 implement.

19 (4) To be effective, each substantive rule adopted
 20 must be within the scope of authority conferred and in
 21 accordance with standards prescribed by other provisions of
 22 law.

23 (5) Whenever by the express or implied terms of any
 24 statute a state agency has authority to adopt rules to
 25 implement, interpret, make specific, or otherwise carry out

1 the provisions of the statute, no rule adopted is valid or
 2 effective unless consistent and not in conflict with the
 3 statute and reasonably necessary to effectuate the purpose
 4 of the statute.

5 (6) No rule is valid unless adopted in substantial
 6 compliance with 2-4-302 or 2-4-303 and subsection--(1)--of
 7 this section or--2-4-303 and unless notice of adoption
 8 thereof is published within 6 months of the publishing of
 9 notice thereof of the proposed rule."

10 Section 7. Section 2-4-306, MCA, is amended to read:
 11 "2-4-306. Filing, format, and effective date --
 12 dissemination of emergency rules. (1) Each agency shall file
 13 with the secretary of state a copy of each rule adopted by
 14 it.

15 (2) The secretary of state may prescribe a format,
 16 style, and arrangement for notices and rules which are filed
 17 pursuant to this chapter and may refuse to accept the filing
 18 of any notice or rule that is not in compliance therewith.
 19 He shall keep and maintain a permanent register of all
 20 notices and rules filed, including superseded and repealed
 21 rules, which shall be open to public inspection and shall
 22 provide copies of any notice or rule upon request of any
 23 person or agency. Unless otherwise provided by statute, the
 24 secretary of state may require the payment of the cost of
 25 providing such copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll shall be published with the rule.

(4) Each rule shall become effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

(b) subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them."

Section 8. Section 2-4-307, MCA, is amended to read:

"2-4-307. Omissions from ARM or register. The secretary of state, with the consent of the adopting agency, may omit from ARM or the register any rule, either proposed or adopted, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if the rule

merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency and if ARM or the register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained. A copy of the omitted matter shall be filed with the secretary of state."

Section 9. Section 2-4-311, MCA, is amended to read:

"2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this chapter in ARM. The secretary of state shall supplement, revise, and publish the ARM or any part thereof as often as he considers necessary. He may include such editorial notes, cross-references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to ARM at such times and in such form as he considers appropriate.

(2) ARM shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications

as it may require. The cost of any such separate publications, determined in accordance with 2-4-313(4), shall be paid by the agency."

Section 10. Section 2-4-312, MCA, is amended to read:

"2-4-312. Publication and arrangement of register. (1)

The secretary of state shall publish in the register all notices, rules, and interpretations filed with him at least once a month or as directed by the administrative code committee but not more often than twice a month ~~in the register~~.

(2) He shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the same. The cost, determined in accordance with 2-4-313(4), must be paid by appropriation from the general fund to the account within the revolving fund created in 2-4-313(5). He shall send the register to any other person who pays a subscription fee which he shall fix ~~in consultation with the administrative code committee~~ in accordance with 2-4-313(4).

(3) The register ~~shall~~ must contain three sections, a rules section, a notice section, and an interpretation section:

(a) The rules section of the register ~~shall~~ must contain all rules filed since the compilation and publication of the preceding issue of the register, together

with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register ~~shall~~ must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register ~~shall~~ must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register ~~shall~~ must contain the issue number and date of the register and a table of contents. Each page of the register ~~shall~~ must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to ARM."

Section 11. Section 2-4-313, MCA, is amended to read:

"2-4-313. Distribution, costs, and maintenance. (1)

The secretary of state shall distribute copies of ARM and supplements or revisions thereto, ~~without charge with costs paid as provided in 2-4-312(2)~~, to the following:

(a) attorney general, one copy;

(b) clerk of each court of record of this state, one copy;

1 (c) clerk of United States district court for the
2 district of Montana, one copy;

3 (d) clerk of United States court of appeals for the
4 ninth circuit, one copy;

5 (e) each county clerk of this state, for use of county
6 officials and the public, one copy, which may be maintained
7 in a public library in the county seat or in the county
8 offices;

9 (f) state law library, one copy;

10 (g) state historical society, one copy;

11 (h) each unit of the Montana university system, one
12 copy;

13 (i) law library of the university of Montana, one
14 copy;

15 (j) legislative council, three copies;

16 (k) library of congress, one copy;

17 (l) state library, one copy.

18 (2) The secretary of state, clerk of each court of
19 record in the state, clerk of each county in the state, and
20 the librarians for the state law library and the university
21 of Montana law library shall maintain a complete, current
22 set of ARM, including supplements or revisions thereto. Such
23 persons shall also maintain the register issues published
24 during the preceding 2 years. The secretary of state shall
25 also maintain a permanent set of the registers.

1 (3) The secretary of state shall make copies of and
2 subscriptions to ARM and supplements or revisions thereto
3 and the register available to any person at prices fixed ~~to~~
4 ~~cover publication and mailing costs in accordance with~~
5 ~~subsection (4).~~

6 (4) The secretary of state, ~~in consultation with the~~
7 ~~administrative code committee,~~ shall determine the cost of
8 supplying copies of ARM and supplements or revisions thereto
9 and the register. ~~Such~~ The cost shall be the approximate
10 cost of ~~publication, including indexing, printing or~~
11 ~~duplicating, and mailing, less fees charged agencies~~
12 ~~pursuant to subsection (6) and money appropriated for~~
13 ~~2-4-312(2) and 2-4-313(1).~~ However, a uniform price per page
14 or group of pages may be established without regard to
15 differences in cost of printing different parts of ARM and
16 supplements or revisions thereto and the register.

17 (5) The secretary of state shall deposit all fees he
18 collects in the general fund ~~an account within the revolving~~
19 ~~fund created for paying the expenses of publication of ARM~~
20 ~~and the register.~~

21 (6) The secretary of state may charge agencies a
22 filing fee for all material to be published in ARM or the
23 register, ~~based on an estimated cost of printing, which the~~
24 ~~he shall fix, in consultation with the administrative code~~
25 ~~committee, the fee to cover a portion of the costs of~~

1 ~~publication and mailing."~~

2 Section 12. Section 2-4-402, MCA, is amended to read:

3 "2-4-402. Powers of the committee -- duty to review
4 rules. (1) The committee shall review all proposed rules
5 filed with the secretary of state.

6 (2) The committee may:

7 (a) prepare written recommendations for the adoption,
8 amendment, or rejection of a rule and submit those
9 recommendations to the department proposing the rule when a
10 rulemaking hearing will not be held in accordance with the
11 provisions of 2-4-302 through 2-4-305;

12 (b) prepare recommendations for the adoption,
13 amendment, or rejection of a rule and submit oral or written
14 testimony at a rulemaking hearing;

15 (c) require that a rulemaking hearing be held in
16 accordance with the ~~provision~~ provisions of 2-4-302 through
17 2-4-305;

18 ~~(d) institute, intervene in, or otherwise participate~~
19 ~~in proceedings involving this chapter in the state and~~
20 ~~federal courts and administrative agencies;~~

21 ~~(e) review the incidence and conduct of administrative~~
22 ~~proceedings under this chapter."~~

23 Section 13. Section 2-4-501, MCA, is amended to read:

24 "2-4-501. Declaratory rulings by agencies. Each agency
25 shall provide by rule for the filing and prompt disposition

1 of petitions for declaratory rulings as to the applicability
2 of any statutory provision or of any rule or order of the
3 agency. A copy must be filed with the secretary of state
4 for publication in the register. A declaratory ruling or the
5 refusal to issue such a ruling shall be subject to judicial
6 review in the same manner as decisions or orders in
7 contested cases."

8 Section 14. Section 2-4-506, MCA, is amended to read:

9 "2-4-506. Declaratory judgments on validity or
10 application of rules. (1) A rule may be declared invalid or
11 inapplicable in an action for declaratory judgment if it is
12 found that the rule or its threatened application interferes
13 with or impairs or threatens to interfere with or impair the
14 legal rights or privileges of the plaintiff.

15 (2) A rule may also be declared invalid in such an
16 action on the grounds that the rule was adopted with an
17 arbitrary or capricious disregard for the purpose of
18 authorizing statute, as evidenced by documented legislative
19 intent.

20 (3) If the administrative code committee has objected
21 to the adoption or amendment of a rule on the grounds set
22 forth in ~~the preceding sentence~~ subsection (2), the agency
23 bears the burden, in any action brought under this section,
24 of proving that its rule was not adopted with an arbitrary
25 or capricious disregard for the purpose of the authorizing

1 statute. >

2 (4) A declaratory judgment may be rendered whether or
3 not the plaintiff has requested the agency to pass upon the
4 validity or applicability of the rule in question.

5 (5) The action may be brought in the district court
6 for the county in which the plaintiff resides or has his
7 principal place of business or in which the agency maintains
8 its principal office. The agency shall be made a party to
9 the action."

10 Section 15. Other act to prevail. Section 5 is
11 intended to correct an apparent oversight creating an
12 inconsistency in relation to notice periods. If 2-4-303(1)
13 is amended by another act to change "20 days" to some period
14 other than "30 days", such other act prevails.

-End-

There being no further questions, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 88:

Representative Waldron gave an explanation of this bill which is an act to provide for grandparent visitation rights with grandchildren under certain circumstances. He stated that this would only apply when the visitation rights are in the best interest of the child.

There were no further proponents and no opponents.

Senator Towe questioned if the only time that this would apply would be in a divorce situation and Representative Waldron said that it also includes a death.

Senator Van Valkenburg questioned what other states have this and Representative Waldron said New York does and a few others.

There being no further questions, the hearing on this bill closed.

CONSIDERATION OF SENATE BILL 153:

Senator Story explained this bill which revises and clarifies the laws relating to administrative rulemaking to define "person: to include agencies; to create a revolving fund for paying the expenses of publication of administrative rules of Montana and the register". He offered an amendment to page 4, line 14 and 15 to strike "other than an agency" and on page 18, line 3, following "copy" insert "of a declaratory ruling".

Mr. Leonard Larson, from the Secretary of State's office, stated that his main concern is the revolving fund.

Mr. Bob Pyfer from the Legislative Council said he did not write this bill, but went over the inclusion of agency in the definition of person.

Mr. John Bobinski from the state personnel division stated that he was concerned about the definition of person to include agency.

Mr. Doyle Saxby, from the Department of Institutions, questioned page 3 when an agency action determines a contract and wondered what they meant by contract. He stated that contract use to be nebulous and with all the purchasing they have in their department he felt that the matter needed to be clarified.

There were no further proponents and no opponents.

Mr. Larson and Mr. Doyle explained for the committee some of the problems involved in the revolving fund.

Senator Turnage moved that the bill be amended on page 4, line 1 by striking "other than an agency". The motion carried unanimously.

Senator Turnage moved that on page 18, line 3, following "copy" the words "of a declaratory ruling" be inserted. The motion carried unanimously.

Senator Towe questioned why should the administrative code commission have the authority to become involved in court cases. Senator Turnage found the need for it in at least one case.

Senator Brown said he really supported this amendment. He felt the administrative rulemaking committee should have the right to sue. He said that we are asking the third branch of government to be a referee.

Senator Lensink stated that we will not act on this bill, but will take some time to think about it. The hearing on this bill closed,

CONSIDERATION OF HOUSE BILL 96:

Representative Thoft gave an explanation of this bill, which is an act to prohibit misrepresentation of age in procuring liquor.

Mr. Leon Messerly, administrator of the liquor division, gave a statement in favor of this bill.

Mr. Bill Harrington, from the Investigation and Enforcement Bureau, gave a statement in support of this bill, stating that this puts the burden of proof back on the individual instead of the business.

There were no opponents to this bill.

Ms. Joan Mayer, attorney for the Legislative Council asked if they intended this to include beer. She gave a definition of liquor and a definition of alcoholic beverages.

Senator Towe moved that on page 1, line 14, we amend the bill by striking the words, "intoxicating liquor" and insert in lieu thereof "alcoholic beverages" and also amend the title accordingly. The motion carried unanimously.

Date 1/5/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

PROPOSED AMENDMENT TO SB-153 (introduced or white copy of the bill)

1. Page 4, line 14 *and 15.*

Strike: "other than an agency"

Proposed amendment to SB 153

1. Page 18, line 3.

Following: "copy"

Insert: "of a declaratory ruling"

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 7 , 1979

The twenty-ninth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 5:07 p.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 37:

Senator Towe commented that he does not feel comfortable with this bill and Senate Bill 129. He suggested that the Committee sit on the bills and let the other attorneys look them over during the interim.

Senator Turnage moved that Senate Bill 37 be tabled. The motion carried unanimously.

DISPOSITION OF SENATE BILL 129:

Senator Turnage moved that this bill be tabled. The motion carried unanimously.

DISPOSITION OF SENATE BILL 54:

Senator Towe moved that on page 1, line 19, after "or" the word "temporary" be inserted and on page 2, line 1, after "a" insert "temporary" and on line 6 after "of" insert "temporary" and on page 2, line 8, after "or" insert "temporary" and on page 2, line 16, after "or" insert "temporary". The motion carried unanimously.

Senator Towe moved that the bill be amended by adding a new section to read as follows: Section 3. Note to codifier. In the event that Senate Bill 243 passes, the reference on page 2, line 1 to 27-19-305 should be changed to section 4 of Senate Bill 24. The motion carried unanimously.

Senator Towe moved that this bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 243:

Senator Brown stated that if the Attorney General wants this bill, they should send us a copy as it should read.

Senator Turnage moved that we ask the Attorney General to offer this to the Committee in a readable form. The motion passed.

DISPOSITION OF SENATE BILL 153:

Senator Towe moved that on page 18, line 3, after "copy" insert "of a declaratory ruling". The motion carried unanimously.

Senator Towe moved that this bill be amended on page 4, line 14, and 15 by striking "other than an agency". The motion carried unanimously.

Senator Turnage moved that Senate Bill 153 do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 228:

Senator Turnage moved to amend this bill on page 3, line 3 by inserting "and" and reinsert lines 4, 5, 6 and 7 and to adopt the amendments offered by Joan Mayer from the Legislative Council and on page 2, line 20, delete "shall" and insert "may". The motion carried with Senator Van Valkenburg voting no.

Senator Van Valkenburg stated that parole does provide some control over the activities of the offender after he leaves.

Senator Brown suggested that the Committee get a list of every bill amending these sections and get a report on where they conflict, etc. He felt the Committee should delay action until we get these bills amending these sections.

Senator Van Valkenburg stated that he did not think that it conflicts at all.

Senator Turnage withdrew his motion.

Senator Towe moved on page 2, line 11 strike "shall" and insert "may".

Senator Brown commented that you are fully restating law by changing that now.

Senator Towe withdrew the motion.

Senator Towe moved that the Committee pass consideration on this bill. The motion carried unanimously.

DISPOSITION OF SENATE BILL 223:

Senator Turnage moved that this bill be tabled. The motion carried unanimously.

DISPOSITION OF SENATE BILL 278:

Senator Turnage felt that this would become a horrendous problem for the S.R.S. It was explained that the S.R.S. would keep only a reference list of interpreters, and when a case comes up they could call and get a list of references; they could select one and this would do away with certification.

Senator Brown suggested that maybe if you want to limit their power, that it be put right in the law.

and became the 1977 bill. I don't recall why we did not repeal at that time. We all agreed that it was the intent of the act to give insurance companies that benefit. It merely allows the local government unit to claim immunity. It does not change the status of the law at all. Exhibit #2-A.

With no other discussion the hearing closed on Senate Bill No. 380.

SENATE BILL NO. 153:

Senator Story. This is another house-keeping bill. This was drafted for the Administrative Code Commission. Most of the changes don't amount to much. However, one change is the definition of person to include agency, and number 2, the Attorney General is in support of the Administrative Code procedure in making these rulings. In section 7, it is just to make clear that the Secretary of State has the format to provide notice. On page 17 is the only substantive change. It describes the authority of the Code Commissioner slightly.

REPRESENTATIVE EUDAILY:

Was there a fiscal note with this, and Senator Story said "no".

There was no other discussion and the hearing closed on Senate Bill #153.

BOYCE CLARKE:

Independent Insurance Agents of Montana
I want to present written testimony for two bills, Senate Bill No. 380 and also 261. Exhibit #1 and 2.

SENATE BILL NO. 291:

Senator Lensink: This deals with appointing to fill vacancies in county and legislative offices. At the present time under present law there is 40 days or more, and after 40 days by appointment. Section 1 changes the time span from 40 to 60 days. Section 2 deals with the county commissioner. Section 3 deals with county offices with four year terms. He presented an amendment to the committee for their consideration. (copy attached, exhibit #3)

MIKE McGRATH:

Department of Justice. We asked that this bill be introduced because of the vacancies within county offices. One of the present problems we have is when a candidate dies between the primary and a general election. This would treat county offices the same as state offices. He suggested an amendment on page 4, concerning the justice of the peace positions.

REPRESENTATIVE UHDE:

Questioned the appointment and election to fill a vacancy.

SENATE BILL NO. 153

INTRODUCED BY STORY

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO ADMINISTRATIVE RULEMAKING; TO DEFINE "PERSON" TO INCLUDE AGENCIES; TO CREATE A REVOLVING FUND FOR PAYING THE EXPENSES OF PUBLICATION OF ADMINISTRATIVE RULES OF MONTANA AND THE REGISTER; AMENDING SECTIONS 2-3-102, 2-4-102, 2-4-103, 2-4-302, 2-4-303, 2-4-305, 2-4-306, 2-4-307, 2-4-311, 2-4-312, 2-4-313, 2-4-402, 2-4-501, AND 2-4-506, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-3-102, MCA, is amended to read:

"2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

(3) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, or the award of a contract, or the equivalent or denial thereof."

Section 2. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee"

1 means the committee provided for in Title 5, chapter 10,
2 part 3.

3 (2) "Agency" means any agency, as defined in 2-3-102,
4 of the state government, except that the provisions of this
5 chapter do not apply to the following:

6 (a) the state board of pardons, except that the board
7 shall be subject to the requirements of 2-4-103, 2-4-201,
8 2-4-202, and 2-4-306 and its rules shall be published in the
9 administrative rules of Montana and Montana administrative
10 register;

11 (b) the supervision and administration of any penal
12 institution with regard to the institutional supervision,
13 custody, control, care, or treatment of youths or prisoners;

14 (c) the board of regents and the Montana university
15 system;

16 (d) the financing, construction, and maintenance of
17 public works.

18 (3) "ARM" means the administrative rules of Montana.

19 (4) "Contested case" means any proceeding before an
20 agency in which a determination of legal rights, duties, or
21 privileges of a party is required by law to be made after an
22 opportunity for hearing. The term includes but is not
23 restricted to rate making, price fixing, and licensing.

24 (5) "License" includes the whole or part of any agency
25 permit, certificate, approval, registration, charter, or

1 other form of permission required by law but does not
2 include a license required solely for revenue purposes.

3 (6) "Licensing" includes any agency process respecting
4 the grant, denial, renewal, revocation, suspension,
5 annulment, withdrawal, limitation, transfer, or amendment of
6 a license.

7 (7) "Party" means any person or--agency named or
8 admitted as a party or properly seeking and entitled as of
9 right to be admitted as a party, but nothing herein shall be
10 construed to prevent an agency from admitting any person or
11 agency as a party for limited purposes.

12 (8) "Person" means any individual, partnership,
13 corporation, association, governmental subdivision, agency,
14 or public organization of any character other--than--an
15 agency.

16 (9) "Register" means the Montana administrative
17 register.

18 (10) "Rule" means each agency regulation, standard, or
19 statement of general applicability that implements,
20 interprets, or prescribes law or policy or describes the
21 organization, procedures, or practice requirements of an
22 agency. The term includes the amendment or repeal of a prior
23 rule but does not include:

24 (a) statements concerning only the internal management
25 of an agency and not affecting private rights or procedures

1 available to the public;

2 (b) ~~formal opinions of the attorney general and~~
3 declaratory rulings issued pursuant to 2-4-501;

4 (c) rules relating to the use of public works,
5 facilities, streets, and highways when the substance of such
6 rules is indicated to the public by means of signs or
7 signals;

8 (d) seasonal rules adopted annually relating to
9 hunting, fishing, and trapping when there is a statutory
10 requirement for the publication of such rules and rules
11 adopted annually relating to the seasonal recreational use
12 of lands and waters owned or controlled by the state when
13 the substance of such rules is indicated to the public by
14 means of signs or signals;

15 (e) rules implementing the state personnel
16 classification plan, the state wage and salary plan, or the
17 statewide budgeting and accounting system;

18 (f) uniform rules adopted pursuant to interstate
19 compact, except that such rules shall be filed in accordance
20 with 2-4-306 and shall be published in the administrative
21 rules of Montana.

22 (1) "Substantive rules" are either:

23 (a) legislative rules, which if adopted in accordance
24 with this chapter and under expressly delegated authority ~~to~~
25 ~~promulgate rules to implement a statute~~ have the force of

1 law and when not so adopted are invalid; or

2 (b) adjective or interpretive rules, which may be
3 adopted in accordance with this ~~part~~ ~~chapter~~ and under
4 express or implied authority to codify an interpretation of
5 a statute, ~~although-such~~ ~~Such~~ interpretation lacks the force
6 of law."

7 Section 3. Section 2-4-103, MCA, is amended to read:

8 "2-4-103. Rules and statements to be made available to
9 public. (1) Each agency shall:

10 (a) make available for public inspection all rules and
11 all other written statements of policy or interpretations
12 formulated, adopted, or used by the agency in the discharge
13 of its functions;

14 (b) upon request of any person-or--agency, provide a
15 copy of any rule.

16 (2) Unless otherwise provided by statute, an agency
17 may require the payment of the cost of providing such
18 copies.

19 (3) No agency rule is valid or effective against any
20 person or party whose rights have been substantially
21 prejudiced by an agency's failure to comply with the public
22 inspection requirement herein."

23 Section 4. Section 2-4-302, MCA, is amended to read:

24 "2-4-302. Notice, hearing, and submission of views.

25 (1) Prior to the adoption, amendment, or repeal of any rule,

1 the agency shall give written notice of its intended action.
 2 The notice shall include a statement of either the terms or
 3 substance of the intended action or a description of the
 4 subjects and issues involved, ~~the~~ rationale for the intended
 5 action, and the time when, place where, and manner in which
 6 interested persons may present their views thereon.

7 (2) The notice shall be filed with the secretary of
 8 state for publication in the register as provided in 2-4-312
 9 and mailed to persons who have made timely requests to the
 10 agency for advance notice of its rulemaking proceedings. The
 11 notice shall be published and mailed at least 30 days in
 12 advance of the agency's intended action.

13 (3) If any statute provides for a different method of
 14 publication, the affected agency shall comply with the
 15 statute in addition to the requirements contained herein.
 16 However, in no case may the notice period be less than 30
 17 days or more than 6 months.

18 (4) Prior to the adoption, amendment, or repeal of any
 19 rule, the agency shall afford interested persons at least 20
 20 days' notice of a hearing and 28 days ~~from the day of notice~~
 21 to submit data, views, or arguments, orally or in writing.
 22 In the case of substantive rules, opportunity for oral
 23 hearing shall be granted if requested by either 10% or 25%
 24 ~~whichever is less~~ of the persons who will be directly
 25 affected by the proposed rule, by a governmental subdivision

1 or agency, or by an association having not less than 25
 2 members who will be directly affected.

3 (5) An agency may continue a hearing date for cause.
 4 Contested case procedures need not be followed in hearings
 5 held pursuant to this section. If a hearing is otherwise
 6 required by statute, nothing herein alters that
 7 requirement."

8 Section 5. Section 2-4-303, MCA, is amended to read:
 9 "2-4-303. Emergency rules. (1) If an agency finds that
 10 an imminent peril to the public health, safety, or welfare
 11 requires adoption of a rule upon fewer than 20 ~~30~~ days'
 12 notice and states in writing its reasons for that finding,
 13 it may proceed, without prior notice or hearing or upon any
 14 abbreviated notice and hearing that it finds practicable, to
 15 adopt an emergency rule. The rule may be effective for a
 16 period not longer than 120 days, but the adoption of an
 17 identical rule under 2-4-302 ~~and---2-4-305{t}~~ is not
 18 precluded.

19 (2) The sufficiency of the reasons for a finding of
 20 imminent peril to the public health, safety, or welfare is
 21 subject to judicial review."

22 Section 6. Section 2-4-305, MCA, is amended to read:
 23 "2-4-305. Requisites for validity -- authority and
 24 statement of reasons. (1) The agency shall consider fully
 25 written and oral submissions respecting the proposed rule.

1 Upon adoption of a rule, an agency shall issue a concise
2 statement of the principal reasons for and against its
3 adoption, incorporating therein its reasons for overruling
4 the considerations urged against its adoption. ~~When no~~
5 ~~written or oral submissions have been received, an agency~~
6 ~~may omit the statement of reasons.~~

7 (2) Rules may not unnecessarily repeat statutory
8 language. Whenever it is necessary to refer to statutory
9 language in order to convey the meaning of a rule
10 interpreting the language, the reference shall clearly
11 indicate that portion of the language which is statutory and
12 the portion which is amplification of the language.

13 (3) Each rule shall include a citation ~~to the specific~~
14 ~~grant of rulemaking authority pursuant to which it or any~~
15 ~~part thereof is adopted. In addition, each rule shall~~
16 ~~include a citation to the specific section or sections in~~
17 ~~the Montana Code Annotated which the rule purports to~~
18 ~~implement.~~

19 (4) To be effective, each substantive rule adopted
20 must be within the scope of authority conferred and in
21 accordance with standards prescribed by other provisions of
22 law.

23 (5) Whenever by the express or implied terms of any
24 statute a state agency has authority to adopt rules to
25 implement, interpret, make specific, or otherwise carry out

1 the provisions of the statute, no rule adopted is valid or
2 effective unless consistent and not in conflict with the
3 statute and reasonably necessary to effectuate the purpose
4 of the statute.

5 (6) No rule is valid unless adopted in substantial
6 compliance with 2-4-302 ~~or 2-4-303~~ and subsection--(f)--of
7 this section ~~or--2-4-303~~ and ~~unless notice of adoption~~
8 ~~thereof is published~~ within 6 months of the publishing of
9 notice thereof ~~of the proposed rule."~~

10 Section 7. Section 2-4-306, MCA, is amended to read:

11 "2-4-306. Filing, format, and effective date --
12 dissemination of emergency rules. (1) Each agency shall file
13 with the secretary of state a copy of each rule adopted by
14 it.

15 (2) The secretary of state may prescribe a format,
16 style, and arrangement for ~~notices and~~ rules which are filed
17 pursuant to this chapter and may refuse to accept the filing
18 of any ~~notice or~~ rule that is not in compliance therewith.
19 He shall keep and maintain a permanent register of all
20 ~~notices and~~ rules filed, including superseded and repealed
21 rules, which shall be open to public inspection and shall
22 provide copies of any ~~notice or~~ rule upon request of any
23 person ~~or agency~~. Unless otherwise provided by statute, the
24 secretary of state may require the payment of the cost of
25 providing such copies.

4

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll shall be published with the rule.

(4) Each rule shall become effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

(b) subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them."

Section A. Section 2-4-307, MCA, is amended to read:

"2-4-307. Omissions from ARM or register. The secretary of state, with the consent of the adopting agency, may omit from ARM or the register any rule, either proposed or adopted, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if the rule

merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency and if ARM or the register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained. A copy of the omitted matter shall be filed with the secretary of state."

Section 9. Section 2-4-311, MCA, is amended to read:

"2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this chapter in ARM. The secretary of state shall supplement, revise, and publish the ARM or any part thereof as often as he considers necessary. He may include such editorial notes, cross-references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to ARM at such times and in such form as he considers appropriate.

(2) ARM shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications

1 as it may require. The cost of any such separate
2 publications, determined in accordance with 2-4-313(4),
3 shall be paid by the agency."

4 Section 10. Section 2-4-312, MCA, is amended to read:
5 "2-4-312. Publication and arrangement of register. (1)
6 The secretary of state shall publish in the register all
7 notices, rules, and interpretations filed with him at least
8 once a month or as directed by the administrative code
9 committee but not more often than twice a month ~~in the~~
10 register.

11 (2) He shall send the register without charge to each
12 person listed in 2-4-313(1) and to each member of the
13 legislature requesting the same. The cost, determined in
14 accordance with 2-4-313(4), must be paid by appropriation
15 from the general fund to the account within the revolving
16 fund created in 2-4-313(5). He shall send the register to
17 any other person who pays a subscription fee which he shall
18 fix ~~in consultation with the administrative code committee~~
19 accordance with 2-4-313(4).

20 (3) The register ~~shall~~ must contain three sections, a
21 rules section, a notice section, and an interpretation
22 section:

23 (a) The rules section of the register ~~shall~~ must
24 contain all rules filed since the compilation and
25 publication of the preceding issue of the register, together

1 with the concise statement of reasons required under
2 2-4-305(1).

3 (b) The notice section of the register ~~shall~~ must
4 contain all rulemaking notices filed with the secretary of
5 state pursuant to 2-4-302 since the compilation and
6 publication of the preceding register.

7 (c) The interpretation section of the register ~~shall~~
8 must contain all opinions of the attorney general and all
9 declaratory rulings of agencies issued since the publication
10 of the preceding register.

11 (4) Each issue of the register ~~shall~~ must contain the
12 issue number and date of the register and a table of
13 contents. Each page of the register ~~shall~~ must contain the
14 issue number and date of the register of which it is a part.
15 The secretary of state may include with the register
16 information to help the user in relating the register to
17 ARM."

18 Section 11. Section 2-4-313, MCA, is amended to read:

19 "2-4-313. Distribution, costs, and maintenance. (1)
20 The secretary of state shall distribute copies of ARM and
21 supplements or revisions thereto, ~~without charge~~ with costs
22 paid as provided in 2-4-312(2), to the following:

23 (a) attorney general, one copy;

24 (b) clerk of each court of record of this state, one
25 copy;

1 (c) clerk of United States district court for the
 2 district of Montana, one copy;

3 (d) clerk of United States court of appeals for the
 4 ninth circuit, one copy;

5 (e) each county clerk of this state, for use of county
 6 officials and the public, one copy, which may be maintained
 7 in a public library in the county seat or in the county
 8 offices;

9 (f) state law library, one copy;

10 (g) state historical society, one copy;

11 (h) each unit of the Montana university system, one
 12 copy;

13 (i) law library of the university of Montana, one
 14 copy;

15 (j) legislative council, three copies;

16 (k) library of congress, one copy;

17 (l) state library, one copy.

18 (2) The secretary of state, clerk of each court of
 19 record in the state, clerk of each county in the state, and
 20 the librarians for the state law library and the university
 21 of Montana law library shall maintain a complete, current
 22 set of ARM, including supplements or revisions thereto. Such
 23 persons shall also maintain the register issues published
 24 during the preceding 2 years. The secretary of state shall
 25 also maintain a permanent set of the registers.

1 (3) The secretary of state shall make copies of and
 2 subscriptions to ARM and supplements or revisions thereto
 3 and the register available to any person at prices fixed to
 4 cover--publication--and--mailing--costs in accordance with
 5 subsection (4).

6 (4) The secretary of state, in consultation with the
 7 administrative code committee, shall determine the cost of
 8 supplying copies of ARM and supplements or revisions thereto
 9 and the register. Such the cost shall be the approximate
 10 cost of publication, including indexing, printing or
 11 duplicating, and mailing, less fees charged agencies
 12 pursuant to subsection (6) and money appropriated for
 13 2-4-312(2) and 2-4-313(1). However, a uniform price per page
 14 or group of pages may be established without regard to
 15 differences in cost of printing different parts of ARM and
 16 supplements or revisions thereto and the register.

17 (5) The secretary of state shall deposit all fees he
 18 collects in the general fund an account within the revolving
 19 fund created for paying the expenses of publication of ARM
 20 and the register.

21 (6) The secretary of state may charge agencies a
 22 filing fee for all material to be published in ARM or the
 23 register, based-on-an-estimated-cost-of-printing--which--he
 24 he shall fix, in consultation with the administrative code
 25 committee, the fee to cover a portion of the costs of

1 ~~publication and mailing."~~

2 Section 12. Section 2-4-402, MCA, is amended to read:

3 "2-4-402. Powers of the committee -- duty to review
4 rules. (1) The committee shall review all proposed rules
5 filed with the secretary of state.

6 (2) The committee may:

7 (a) prepare written recommendations for the adoption,
8 amendment, or rejection of a rule and submit those
9 recommendations to the department proposing the rule when a
10 rulemaking hearing will not be held in accordance with the
11 provisions of 2-4-302 through 2-4-305;

12 (b) prepare recommendations for the adoption,
13 amendment, or rejection of a rule and submit oral or written
14 testimony at a rulemaking hearing;

15 (c) require that a rulemaking hearing be held in
16 accordance with the ~~provision provisions~~ of 2-4-302 through
17 2-4-305;

18 ~~(d) institute, intervene in, or otherwise participate~~
19 ~~in proceedings involving this chapter in the state and~~
20 ~~federal courts and administrative agencies;~~

21 ~~(e) review the incidence and conduct of administrative~~
22 ~~proceedings under this chapter."~~

23 Section 13. Section 2-4-501, MCA, is amended to read:

24 "2-4-501. Declaratory rulings by agencies. Each agency
25 shall provide by rule for the filing and prompt disposition

1 of petitions for declaratory rulings as to the applicability
2 of any statutory provision or of any rule or order of the
3 agency. A copy of A DECLARATORY RULING must be filed with
4 the secretary of state for publication in the register. A
5 declaratory ruling or the refusal to issue such a ruling
6 shall be subject to judicial review in the same manner as
7 decisions or orders in contested cases."

8 Section 14. Section 2-4-506, MCA, is amended to read:

9 "2-4-506. Declaratory judgments on validity or
10 application of rules. (1) A rule may be declared invalid or
11 inapplicable in an action for declaratory judgment if it is
12 found that the rule or its threatened application interferes
13 with or impairs or threatens to interfere with or impair the
14 legal rights or privileges of the plaintiff.

15 (2) A rule may also be declared invalid in such an
16 action on the grounds that the rule was adopted with an
17 arbitrary or capricious disregard for the purpose of
18 authorizing statute, as evidenced by documented legislative
19 intent.

20 (3) If the administrative code committee has objected
21 to the adoption or amendment of a rule on the grounds set
22 forth in the preceding sentence ~~subsection (2)~~, the agency
23 bears the burden, in any action brought under this section,
24 of proving that its rule was not adopted with an arbitrary
25 or capricious disregard for the purpose of the authorizing

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A

1 statute.

2 (4) A declaratory judgment may be rendered whether or
3 not the plaintiff has requested the agency to pass upon the
4 validity or applicability of the rule in question.

5 (5) The action may be brought in the district court
6 for the county in which the plaintiff resides or has his
7 principal place of business or in which the agency maintains
8 its principal office. The agency shall be made a party to
9 the action."

10 Section 15. Other act to prevail. Section 5 is
11 intended to correct an apparent oversight creating an
12 inconsistency in relation to notice periods. If 2-4-303(1)
13 is amended by another act to change "20 days" to some period
14 other than "30 days", such other act prevails.

-End-

STATE OF MONTANA

Request No. 44-79

FISCAL NOTE

Form BD-15

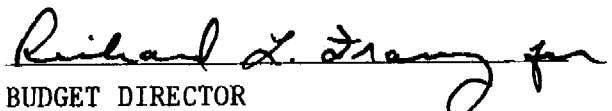
In compliance with a written request received January 22, 1979, there is hereby submitted a Fiscal Note for Senate Bill 153 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise and clarify the laws relating to administrative rulemaking; to define "person" to include agencies; to create a revolving fund for paying the expenses of publication of Administrative Rules of Montana and the Register.

FISCAL IMPACT:

None


BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1/24/79